

**12. FINAL STATEMENT OF REASONS**

# FINAL STATEMENT OF REASONS

## UPDATE OF INITIAL STATEMENT OF REASONS

**SECTION 8.** Amendments to this section were not included in the proposed regulation that was originally noticed to the public. Some amendments were added for this section by OAL prior to the 15-day public comment period in order to clarify the difference between express terms and final text and the requirements for each regarding underline/strikeout for Certification of Compliance filings pursuant to Government Code section 11346.1(e). These filings are necessary in order to make an emergency regulation permanent. However, OAL has since determined that these modifications are not sufficiently related to the original text so that the public was not adequately placed on notice that this change could result, as required by Government Code section 11346.8(c). Therefore, these amendments have been removed from this rulemaking.

**SECTION 48.** This section was not included in the proposed regulation that was originally noticed to the public. It was added by OAL prior to the 15-day public comment period. Its purpose is to ensure that the regulated public knows that at least 5 days notice is required prior to submission of the emergency regulation to the Office and that the Office will accept public comment for 5 days once the file is submitted. Currently there is no mechanism by which the regulated public is made aware that they are able to comment on the proposed emergency regulations. This section requires the rulemaking agency to include a specified statement or one that is substantially similar to that statement regarding notice and opportunity to comment. This is necessary so that this information is provided to every person who has filed a request for notice of regulatory action with the agency, as required by Government Code section 11346.1(a)(2). The modifications in this section are sufficiently related to the original text so that the public was adequately placed on notice that this change could result, as required by Government Code section 11346.8(c).

**SECTION 50:** Amendments were made to this section that were not included in the proposed regulation that was originally noticed to the public, but were made prior to the 15-day public comment period. First, the heading of this section was changed to be more accurate in describing its substantive content. Second, this section was amended to specify what is to be submitted to OAL in emergency filings. Previously this section only identified the notice statement as being required. This section was also modified to clarify the information and statements that must be submitted for a proposed emergency rulemaking.

As a result of comments received during the 15-day comment period, subsection (a)(4) was revised for clarity by referring to the statutory requirement in Government Code 11346.5(a)(6) for the fiscal estimate. Government Code section 11346.1(b)(2) states that the finding of emergency must contain the information in subsection (6) of Government Code section 11346.5(a) and that subsection requires the estimate prepared in accordance with instructions from the Department of Finance. These modification are sufficiently related to the original text so that the public was adequately placed on notice that this change could result, as required by Government Code section 11346.8(c).

In addition, two non-substantial changes were made to this section subsequent to the 15-day comment period. In order to clarify that it is the rulemaking agency who adopts the regulation (Government Code section 11349.1(a)) rather than OAL, the words "of the rulemaking agency" were added to subsection (a)(4)(B)1. and the words "by the rulemaking agency" were added to subsection (a)(4)(B)2.

**SECTION 52:** Amendments were made to this section that were not included in the proposed regulation that was originally noticed to the public, but were made prior to the 15-day public comment period. This section was changed to be more clear and concise. In addition, the section was amended to reflect the fact that pursuant to the clear language of Government Code section 11346.1(a)(2), the five-day notice is required for readoptions of an emergency regulation. A new subsection was added to clarify that for a readoption an agency may incorporate by reference the previous rulemaking record rather than resubmit the entire contents again. These modification are sufficiently related to the original text so that the public was adequately placed on notice that this change could result, as required by Government Code section 11346.8(c).

In addition, three non-substantial changes were made to this section subsequent to the 15-day comment period. In order to clarify that it is the rulemaking agency who readopts the regulation and requests approval from OAL for the readoption (Government Code section 11346.1(h)), the words "approval for" were added to subsection (b) and subsection (d). The express terms included (b)(3) as an item that must be provided for a readoption. This had been amended to make it a separate subsection (c) during the 15-day notice. However, this change made it less clear that the agency must provide it. Consequently, this has been corrected by inserting this subsection as (b)(1) and adding the words "and either" to indicate that either (b)(2) or (b)(3) must be provided along with (b)(1).

**SECTION 54:** This section was originally noticed to the public but was deleted prior to the 15-day public comment period.

**SECTION 55:** Minor modifications were made to this section that were not included in the proposed regulation that was originally noticed to the public, but were made prior to the 15-day public comment period. The purpose of these changes is to make this section more clear:

- 1) clarifying that section 100 is a non-emergency filing in subsection (a)(2);
- 2) clarifying that comments must be received by OAL within 5 calendar days after notice of the emergency filing is posted by OAL in its Internet Website in subsection (b)(2);
- 3) clarifying that a commenter shall simultaneously submit comments to OAL and the agency in subsection (d);
- 4) adding a citation to Government Code section 11349.6(c) in subsection (f); and
- 5) clarifying that the numbered items in subsection (g) give guidance in regard to timeliness of agency rebuttals or responses.

All of these modifications are sufficiently related to the original text so that the public was adequately placed on notice that this change could result, as required by Government Code section 11346.8(c).

## LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

## ALTERNATIVES DETERMINATION

The Office of Administrative Law has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

## SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF FEBRUARY 9, 2007 THROUGH APRIL 3, 2007.

The originally proposed text was made available for public comment for at least 45 days from February 9, 2007 through April 3, 2007. Three written comment letters were received during that period, one of which was received at the public hearing on April 3, 2007. Pursuant to Government Code section 11346.9(a)(3) and (a)(5), OAL has summarized and responded to those comments as follows:

### **Department of Consumer Affairs letter dated 3-20-07**

***Comment A1: Subsection 50(a)(1) [now (a)(5)(A)]:*** The commenter points out drafting errors that need revision for clarity. The commenter suggests the following: The words “that it” should be deleted.

***Accept:*** The proposed subsection has been revised for clarity. However, the revision is different than the commenter suggests in order to maintain parallel construction with section 50(a)(2).

***Comment A2: Subsection 50(a)(2) [now (a)(5)(B)]:*** The commenter points out drafting errors that need revision for clarity.

***Accept:*** The proposed subsection has been revised for clarity.

***Comment A3: Subsection 50(c) [now 50(b)]:*** The commenter states that a revision is necessary to improve clarity and suggests: “OAL shall disapprove an emergency regulation that includes a statement submitted pursuant to subdivision (a)(2)....”

***Accept in part:*** The proposed subsection has been revised for clarity but with different language than suggested by the commenter.

***Comment A4: Subsection 52(b)(2):*** The commenter states that a revision is necessary to improve clarity and suggests: “Either a statement that circumstances are unchanged since the initial adoption or prior readoption or, if circumstances have changed since that time, an update of the documentation required for the initial adoption.”

***Accept in part:*** The proposed subsection has been revised for clarity but with different language than suggested by the commenter.

**Department of Toxic Substances Control letter dated 3-28-07**

**Comment B1: Subsection 50(a):** The commenter states that it is ambiguous whether the requirements of subsection (a) apply to situations where the Legislature, by statute, has already declared that a situation requires or allows the promulgation of an emergency regulation. The commenter suggests adding language such as: "No finding of emergency is required by this section if the Legislature, by statute, has determined that a regulation may be promulgated by emergency procedures."

**Reject:** The notice requirements are applicable for both deemed emergencies and emergencies based on a finding of emergency. It is entirely reasonable to think that the Legislature may want to have regulations adopted as a deemed emergency and that the adoption should be done subject to the advance notice requirement. If the Legislature intends otherwise, it can easily write a deemed emergency clause to expressly exempt the rulemaking from the prior notice requirement. In addition, the proposed section 50(a) does not address the required finding of emergency. It describes the requirements for both when a notice is sent and when one is not necessary pursuant to Government Code section 11346.1(a)(3). In addition, in legal construction the specific rule outweighs the general. Therefore, when the legislature specifically states that a situation is deemed an emergency, we have never required a description of specific facts demonstrating the existence of an emergency.

**C.E. Smith letter dated 4-2-07**

**Comment C1: General:** The commenter states that deemed emergencies should be categorically exempt from the notice requirement of Government Code section 11346.1(a)(2).

**Reject:** The Legislature has not exempted deemed emergencies from the notice requirements of the APA. The only requirement of the APA that is not necessary for deemed emergencies is the description of specific facts demonstrating the existence of an emergency and the need for immediate action in the finding of emergency. In essence, in a deemed or statutory emergency the Legislature finds that there is an emergency, eliminating the necessity for the agency to present specific facts to make such a finding. The notice requirements are necessary in both instances for the public to have the opportunity to comment on the proposed text of the regulation before adoption of the proposed emergency regulations.

**Comment C2: General:** The commenter suggests that Government Code section 11346.1(a)(2) should be clarified through regulation. The commenter believes the distinction between adoption and filing has been blurred and points out that in some instances an agency, based on statutory authority, may not need to submit the emergency regulation to OAL but only transmit it for printing in the CCR without the standard OAL review.

**Reject:** Government Code section 11346.1(a)(2) clearly states the requirement that the *adopting* agency shall send notice to the public before *submitting* an emergency regulation to OAL. Proposed section 50(a) also clearly states that it is applicable to agencies *submitting* emergency regulations to OAL. Barring statutory authority to the contrary, once an agency has adopted an emergency regulation, they must submit it to OAL for review to ensure that it meets the standards and requirements of the APA. In addition, Government Code section 11349.6(b) makes it clear that emergency regulations adopted by an agency are "*proposed* emergency regulations."

**Comment C3: General:** The commenter states that no one has clarified the meaning of the phrase “substantial evidence” in Government Code section 11346.1(b)(2) and that OAL should address this through regulation.

**Reject:** The meaning of “substantial evidence” needs no further clarification. It is a common legal term with a standard meaning. It has the same meaning as found in Black’s Law Dictionary: “Such evidence that a reasonable mind might accept as adequate to support a conclusion” and “evidence possessing something of substance and relevant consequence and which furnishes substantial basis of fact from which issues tendered can be reasonably resolved.”

**Comment C4: Subsections 50(a)(1) and (2) [now (a)(5)(A) and (B)]:** The commenter states that this section must be revised because it is unclear whether the statements required in the proposed text in subsection (a)(1) and (2) are certifications and whether they must be made under penalty of perjury.

**Reject:** The plain language of the regulation makes it clear that the subsection (a)(1) and (a)(2) [now (a)(5)(A) and (B)] statements are not certifications and are not required to be made under penalty or perjury.

Note: Proposed subsection 50(b)(1) [now section 50(a)(5)(B)1.] has been revised for clarity eliminating the word “certification” and specifying that the time periods are pursuant to statute.

**Comment C5: Subsections 50(a)(1) and (2) [now (a)(5)(A) and (B)]:** The commenter states that subsections (a)(1) and (2) are grammatically unclear and need revision.

**Accept:** See Response to Comments A1 and A2.

**Comment C6: Subsections 50(b)(1) and (2) [now (a)(5)(B)1. and 2.]:** The commenter states that the “specific facts” required by the proposed text in subsections (b)(1) and (b)(2) should be included in the statement required by the proposed text in subsection (a)(2), not in the Finding of Emergency. The commenter believes that inclusion of the specific facts in the Finding of Emergency could cast a cloud of doubt over the emergency if it is determined that these specific facts do not meet the standard of Government Code section 11346.1(a)(3). The commenter believes that the Government Code section 11346.1(a)(1)(3) requirement creates an “uber-emergency.”

**Reject:** The statements required by subsections (a)(1) and (2) [now (a)(5)(A) and (B)] are simple declarations of matters of fact. The Finding of Emergency provides the specific facts to demonstrate by substantial evidence that the emergency standard of Government Code section 11342.545 has been met. Additional “specific facts” must be included in the Finding of Emergency to support the subsection (a)(2) [now (a)(5)(B)] statement. The requirement is for additional facts indicating that “delaying action to allow public comment would be inconsistent with the public interest.” These facts serve solely to demonstrate by substantial evidence that the need for “immediate action to avoid serious harm” as required for an emergency, pursuant to Government Code section 11342.545, is such that the additional delay to provide notice and opportunity for comment is inconsistent with the public interest. The statutory standards are sufficiently clear to assess whether the description of specific facts in the Finding of Emergency meets this higher standard, meets the general emergency standard or does not meet either standard.

**Comment C7: Subsections 50(b)(1) and (2) [now (a)(5)(B)1. and 2.]:** The commenter states that the inadequacy of the “specific facts” in subsection (b) represents a procedural defect. As such, it “should also be modified to require the return of an emergency regulation to the adopting agency rather than the disapproval of the emergency regulation.”

**Reject:** Government Code section 11349.6(b) states that OAL “shall disapprove the emergency regulations if it determines that... the agency failed to comply with Section 11346.1.” The agency must either provide the notice period required by Government Code section 11346.1(a)(2) or include the specific facts required by subsections 50(b) [now (a)(5)(B)1. and 2.] to demonstrate that Government Code section 11346.1(a)(3) is applicable. If the specific facts are inadequate for that purpose, the agency would then have the opportunity to supplement them during the OAL review, withdraw the file to supplement them, withdraw to provide notice, do nothing and receive a disapproval. In addition, as indicated in Government Code section 11346, the purpose of the APA is “to establish basic minimum procedural requirements....” Consequently, an uncorrected defect in complying with APA procedures can be sufficient grounds for disapproval. The statute does not require OAL to return a rulemaking file that fails to include the specific facts required in subsection 50(b).

**Comment C8: Subsections 50(b)(1) and (2) [now (a)(5)(B)1. and 2.]:** The commenter states that the terms “substantial” and “serious” are unclear and lead to a “we’ll know it when we see it” standard. The commenter suggests that the regulation should be revised to clarify these terms. In addition, the commenter states that subsection (b) does not meet the necessity standard.

**Reject:** The phrase “serious harm” as used in subsections (b)(1) and (2) [now (a)(5)(B)1. and 2.] reflects the exact statutory phrase in Government Code sections 11342.545, 11346.1(a)(3) and 11349.6(b). A determination as to whether the harm to be avoided is “serious” will be based on its common meaning such as the definition provided in Black’s Law Dictionary: “Important; weighty; momentous, grave, great....” The common meaning provides sufficient clarity. Regarding definition of the phrase “substantial evidence,” as used in subsection 50(b) [now (a)(5)(B)], see Response to Comment C3. Without the documentation required by these subdivisions, it would be difficult for OAL to assess whether an emergency still exists and whether there has been any change in circumstances that may impact the emergency situation, which is OAL’s responsibility prior to approving a readoption.

**Comment C9: Subsection 50(b)(1) [now (a)(5)(B)1.]:** The commenter states that “the premise is flawed at its core in asserting that the 12 days represents the ‘minimum amount of time’ added to the emergency process imposed upon state agencies.” The commenter asserts that many state agencies must rely on the Office of State Publishing which entails a lead time of approximately 30 days for “completion of a non-trivial document.” The commenter concludes that the total number of days of delay would be about 42 days. The commenter further asserts that “No arbitrary time frame... could serve to distinguish meaningfully between two actions deemed ‘most pressing or urgent’ ....”

**Reject in part/Accept in part:** No specific suggestion is made for revision of the regulation, but commenter infers that the 12 day period should be changed to 42 days. It may be true that the process to create and send an emergency regulation notice could take longer in some agencies and in that case the agency must simply provide the five day notice required by Government Code section 11346.1(a)(2). The 12-day limit is a rational and reasonable way to distinguish between a standard emergency and one that is more immediately necessary and is in no way

arbitrary. The 12 day period was arrived at as follows: Unless Government Code section 11346.1(a)(3) is applicable, Government Code section 11346.1(a)(2) requires the agency to send a notice at least five working days before submitting the emergency regulation to OAL. Consequently, due to the two days on the weekend, at least seven calendar days will transpire before the emergency regulation is submitted to OAL. Pursuant to Government Code section 11349.6(b), OAL must allow the public to submit comments on the regulation for an additional five calendar days. The minimum amount of time that would be added by the notice and comment process is 12 days. Therefore, it is necessary that an agency demonstrate the need to adopt the regulation within that time period in order for Government Code section 11346.1(a)(3) to be applicable. However, the subsection has been revised to enhance clarity by specifically referring to the notice and comment periods rather than a 12 day period.

**Comment C10: Subsection 50(b)(2) [now (a)(5)(B)2.]:** The commenter makes several assertions in one paragraph that are addressed separately below:

**C10a:** First, the commenter states in regards to the term “substantial evidence:” “what is being called for is more properly characterized as ‘substantial speculation’ than as any sort of evidence.”

**Reject:** No specific suggestion is made for revision of the regulation. The substantial evidence required is to demonstrate that the agency reasonably expects to prevent or significantly alleviate the serious harm described in subsection (b)(1) [now (a)(5)(B)1.] by not delaying the action to allow time for public comment. See Response to Comment C3

**C10b:** Second, the commenter states that “administrative regulations are adopted, not enacted, by state agencies.”

**Accept:** The proposed text has been revised to maintain parallel construction with subsection (b)(1) [now (a)(5)(B)1.].

**C10c:** Third, the commenter states that “when received by OAL, the regulation would have already been adopted and cannot be considered ‘proposed’ at that point....”

**Reject:** No specific suggestion is made for revision of the regulation. An agency adopts a regulation and then proposes that it become law. After adopting the regulation, the agency submits it to the public for comment and follows other procedures of the APA, then submits the proposed regulation text along with the regulatory file to OAL for review. The regulation is not fully “adopted” into law until OAL approves it and files it with the Secretary of State, which is the usage here.

**C10d:** Fourth, the commenter states that “both ‘reasonably’ and ‘significantly’ are subjective terms that are inherently unclear absent a standard to measure them by.”

**Reject:** No specific suggestion is made for revision of the regulation. The standard for both words is the generic dictionary definition for each. In addition, Black’s Law Dictionary provides further guidance on the meaning of “reasonable:” “fair, proper, just, moderate, suitable under the circumstances. Fit and appropriate to the end in view.” The common definition for “significant” is “notable, valuable.” These are both common legal terms and have the commonly understood meaning for each.



**C10e:** Fifth, the commenter states that the time frame for prevention or amelioration of the serious harm is unclear and questions whether it must occur within the 12 day period of subsection (b)(1).

**Reject:** No specific suggestion is made for revision of the regulation. The timeframe necessary to prevent or alleviate a serious harm to the public peace, health, safety, or general welfare largely depends on the type of harm being addressed. There is no expectation in statute or regulation that it must be prevented or ameliorated within the 12 day period, but only that the adoption of the emergency regulation will have the desired beneficial effect on the emergency situation.

**Comment C11: Subsection 50(c) [now 50(b)]:** The commenter states that “subsection (c) should be amended to require OAL to return an emergency regulation for which OAL had determined that a statement submitted pursuant to subsection (a)(2) was unsupported by specific facts.

**Reject:** See Response to Comments C6 and C7. However, the proposed text has been revised for clarity.

**Comment C12: Subsection 50(c) [now 50(b)]:** The commenter suggests that “subdivision” is incorrect and should be replaced with “subsection.” The commenter further notes that “subsections” rather than “subdivisions” is used in 1 CCR 55 (c), (f), and (g).

**Accept:** The proposed text has been revised for clarity and consistency by replacing “subdivision” with “subsection.”

**Comment C13: Subsections 52(b)(1) and (2):** The commenter states that “the relevance and necessity for paragraphs (b)(1) and (2) with regard to readoption is not established within the present ISOR.”

**Reject:** See Response to Comment C8 and Response to Comment A4.

**Comment C14: Subsection 52(b)(3) [now 52(c)]:** The commenter states that the “‘substantial evidence’ criterion” is “inherently vague” and makes it difficult to know what is acceptable to justify readoption.

**Reject:** “Substantial evidence” is a common legal term. For instance, it has been used for years in the APA to determine whether the Necessity standard is met (see Government Code 11349(a)). It is a familiar legal term for APA practitioners. It has the same meaning in this context as it has in the just cited GC section. See Response to Comment C3.

**Comment C15: Subsection 52(b):** The commenter states that this subdivision “does not clearly indicate in what form or by what means this material is to be provided.” The commenter then specifically alludes to the documentation requirements of subsections (b)(1) and (2).

**Accept in part:** The proposed text has been revised for clarity. See Comment A4.

**Reject in part:** The proposed text requires documentation in subsections (b)(1) and (2) and a statement in subsection (b)(3) [now (c)]. These can take many forms. The proposed text does not prescribe any particular form for submission of this information. Generally, when an agency submits a request for readoption, they will incorporate by reference the previous file so that they do not have to resubmit documentation that had been submitted when promulgating the initial emergency regulation. The documentation in subsections (b)(1) and (2) updates the file and the finding of emergency so that OAL can make a determination whether an emergency still exists.

The statement in subsection (b)(3) [now (c)] provides information to make a determination whether the agency has complied with the last sentence of Government Code section 11346.1(h). The documentation and statement are provided as part of a rulemaking file that the agency submits to OAL.

**Comment C16: Subsection 52(b):** The commenter makes several assertions in one paragraph that are addressed separately below:

**C16a:** First, the commenter suggests including “to OAL” after the word “following” and immediately preceding the colon.

**Reject:** Since there is no other state office with authority to review regulations for compliance with the APA, OAL is inferred and it is not necessary to make it explicit.

**C16b:** Second, the commenter suggests inserting the phrase “or prior readoption” in subsection (b)(1).

**Accept:** The proposed subsection has been revised for clarity including the insertion of the phrase “or prior readoption.” See Response to Comment A4.

**C16c:** Third, the commenter suggests that the specific subsections of Government Code section 11346.1 could be included in subsection (b)(2).

**Accept:** The proposed subsection has been revised for clarity including the insertion of subsection (b) for Government Code section 11346.1 . See Response to Comment A4.

**Comment C17: Section 54:** The commenter states that the 270 day period described in this section “fails to meet the statutory criterion for necessity” and that it will be a hindrance to agencies filing emergency regulations. The commenter objects to its inclusion in the proposed text.

**Accept:** This section has been removed from this regulatory action.

**Comment C18: Subsection 55(b):** The commenter states that the exception to the notice requirement is unclear unless viable and objective criteria are provided to clarify “such an immediate, serious harm.”

**Reject:** This language reflects the standard in Government Code section 11346.1(a)(3) that must be met in order to be excepted from the notice requirement. This determination is inherently a judgment call made on a case-by-case basis. No “viable and Objective” criteria are suggested by the commenter and OAL believes that none are possible given the need to make a case-by-case determination based on the unique facts of each emergency. See Response to Comment C8.

**Comment C19: Closing Observation:** The commenter alleges that for OAL “to review and bless its own rulemaking activities undeniably represents a conflict of interest.” The commenter infers that there is no entity to oversee OAL rulemaking activities and infers that there should be one.

**Reject:** Every OAL rulemaking must follow the procedures of the APA and comply with its established standards in the same manner as other state agencies. As part of the Executive branch, OAL is not only under the oversight of the Governor, but is required to “work closely with, and upon request report directly to, the Legislature” (Government Code section 11340.1(a)). In addition, Government Code section 11350 permits any interested person to

obtain judicial review as to the validity of any regulation. The multiple layers of oversight provided in the Government Code are sufficient safeguards for neutrality when OAL reviews its own rulemakings.

#### **COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC.**

The modified text was made available to the public from October 30, 2007 through November 16, 2007. OAL received two emailed comments during that period. Pursuant to Government Code section 11346.9(a)(3) and (a)(5), OAL has summarized and responded to those comments as follows:

##### **H. Bolz email dated 11-9-07**

**Comment D1: Subsection 50(a)(4):** The commenter stated that part of the modified text appears to require adopting agencies to fill in both parts of the Form 399 when submitting emergency regulations. The commenter questioned whether this is a policy change by OAL to require both parts and whether this will also be required for regular rulemakings. If not, the commenter suggests replacing the Form 399 reference with "Fiscal Impact Statement" in subsection (a)(4).

**Accept in part/reject in part:** Rather than making the change suggested by the commenter, this subsection has been deleted for clarity purposes.

##### **C.E. Smith email dated 11-15-07**

**Comment E1: Subsection 50(a)(4):** The commenter states that "paragraph (a)(4)" is a new requirement and appears to incorporate by reference both the Form 399 and Department of Finance instructions. As such, the requirements for incorporation by reference in 1 CCR 20 have not been followed.

**Accept:** This subsection has been deleted for clarity purposes.

**Comment E2: Subsection 50(a)(4):** The commenter states that subsection (a)(4) effectively requires completion of both parts of Form 399, whereas only the fiscal impact portion is required by Government Code section 11346.5(a)(6). The commenter suggests "abandoning" this subsection.

**Accept:** This subsection has been deleted for clarity purposes.

#### **ECONOMIC IMPACT ON SMALL BUSINESS**

No commenter proposed an alternative to lessen any adverse economic impact on small businesses.